

## Office of the Secretary, Commerce

## §8b.3

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AUTHORITY: 29 U.S.C. 794.

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### Subpart A—General Provisions

#### §8b.1 Purpose.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. The purpose of this part is to implement section 504 with respect to programs or activities receiving Federal financial assistance from the Department of Commerce.

#### §8b.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Commerce and to each program or activity receiving such assistance. The requirements of this part do not apply to the ultimate beneficiaries of Federal financial assistance in the program or activity receiving Federal financial assistance.

#### §8b.3 Definitions.

As used in this part, the term:

(a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended

by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, and by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602 (codified at 29 U.S.C. 794 (1976 & Supp. II 1978)).

(b) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(c) *Department* means the Department of Commerce and any of its constituent units authorized to provide Federal financial assistance.

(d) *Facility* means all or any portion of buildings, ships, structures, equipment, roads, walks, parking lots, industrial parks, or other real or personal property or interest in such property.

(e) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guarantee), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(f) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (g) of this section.

(g) *Handicapped person*—(1) *Handicapped person* means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Has a record of such an impairment; or

(iii) Is regarded as having such an impairment.

(2) For purposes of employment, the

term “handicapped person” does not include any person who is an alcoholic

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or drug abuser whose current use of alcohol or drugs prevents that individual from performing the duties of the job in question, or whose employment, because of current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others.

(3) As used in paragraph (g)(1) of this section, the phrase:

(i) *Physical or mental impairment* means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(C) The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) *Major life activities* means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and receiving education or vocational training.

(iii) *Has a record of such an impairment* means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means that the individual:

(A) Has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

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(C) Has none of the impairments defined in paragraph (g)(3)(i) of this section, but is treated by a recipient as having such an impairment.

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

(i) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to post secondary and vocational education services, a

handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(3) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) *Recipient* means any State or its political subdivisions, any instrumentality of a State or its political subdivisions, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or indirectly through another recipient, or including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(k) *Secretary* means the Secretary of Commerce, U.S. Department of Commerce.

(l) *Section 504* means section 504 of the Act.

(m) *Small recipient* means a recipient who serves fewer than 15 beneficiaries and who employs fewer than 15 employees at all times during a grant year.

[47 FR 17746, Apr. 23, 1982, as amended at 68 FR 51353, Aug. 26, 2003]

#### §8b.4 Discrimination prohibited.

(a) *General.* No qualified handicapped individual shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

(b) *Discriminatory actions prohibited.*  
(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped individual the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped individual an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped individual with any aid, benefit, or

service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped individuals or to any class of handicapped individuals, unless such action is necessary to provide qualified handicapped individuals with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped individual by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified handicapped individual the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefits, or services.

(2) For purposes of this part, aid, benefits, and services must afford handicapped individuals an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as afforded to others, in the most integrated setting appropriate to the individual's needs. However, aid, benefits and services, to be equally effective, need not produce the identical result or level of achievement for handicapped and non-handicapped individuals.

(3) A recipient may not deny a qualified handicapped individual the opportunity to participate in its regular aid, benefits, or services, despite the existence of separate or different aid, benefits, or services which are established in accordance with this part.

(4) A recipient may not, directly or through contractual or other arrangements, use criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped individuals to discrimination on the basis of handicap;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity